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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,879	12/30/2004	Anthony Devasia Joseph	13473.0006USWO	7399
23552	7590	12/03/2007		
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER WINSTON, RANDALL O	
			ART UNIT 1655	PAPER NUMBER
			MAIL DATE 12/03/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/519,879	JOSEPH, ANTHONY DEVASIA	
	<b>Examiner</b>	<b>Art Unit</b>	
	Randall Winston	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 8-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

Acknowledgement is made of receipt and entry of the amendment filed on 09/18/2007.

The claim objection has been overcome by Applicant's amendment.

The 35 U.S.C 112, second paragraph, rejection has been overcome by Applicant's amendment.

The 35 U.S.C 112, first paragraph, rejection has been overcome by Applicant's amendment.

Examiner acknowledges that claims 8-11 are withdrawn from consideration.

Amended claims 1-7 will be examined on the merits.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7 as amended stand rejected under 35 USC 112, first paragraph, because the specification, while enabling for a composition consisting essentially of nut oil extract obtained from nuts from the plant species of *Semecarpous Anacardium Linn* or *Anacardium Occidentale Linn* and further including the other claimed extracts (i.e. *Allium Sativum Linn* and *Officinale Rose Linn*) to treat the claimed disorders therein, the specification does not enable any person in the art in preparing a composition consisting essentially of nut oil extract obtained from nuts from the entire *Anacardium* genus and *Semecarpous* genus and further including the other claimed extracts (i.e. *Allium Sativum Linn* and *Officinale Rose Linn*) to treat the claimed disorders therein.

The specification does not enable any person skilled in the art to which it pertains, or with which is most nearly connected, to make and/or use the invention commensurate in scope with the claims.

The factors to be considered in determining whether undue experimentation is required are summarized in *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988) (a) the breadth of the claims; (b) the nature of the invention; (c) the state of the prior art; (d) the level of ordinary skill; (e) the level of predictability in the art; (f) the amount of direction provided by the inventor; (g) the existence of working examples; and (h) the quantity of experimentation needed to make or use the invention based on the content of the disclosure.

Applicant claims a composition consisting essentially of nut oil extract obtained from nuts from the entire *Anacardium* genus and *Semecarpous* genus and further including the other claimed extracts (i.e. *Allium Sativum* Linn and *Officinale Rose* Linn) to treat the claimed disorders therein. Applicant has reasonably demonstrated on pages 3-5, especially on page 3 lines 12-26 of the specification, a composition consisting essentially of nut oil extract obtained from nuts from the plant species of *Semecarpous Anacardium* Linn or *Anacardium Occidentale* Linn and further including the other claimed extracts (i.e. *Allium Sativum* Linn and *Officinale Rose* Linn) to treat the claimed disorders therein. Applicant's specification, however, has failed to provide guidance or working examples whereby applicant prepares a composition consisting essentially of nut oil extract obtained from nuts from the entire *Anacardium* genus and

*Semecarpous* genus and further including the other claimed extracts (i.e. *Allium Sativum Linn* and *Officinale Rose Linn*) to treat the claimed disorders therein.

Furthermore, it should be noted that the state of the prior art at the time the invention was filed did not recognize a composition consisting essentially of nut oil extract obtained from nuts from the entire *Anacardium* genus and *Semecarpous* genus and further including the other claimed extracts (i.e. *Allium Sativum Linn* and *Officinale Rose Linn* to treat the claimed disorders therein such as cardiac ailments and for increasing cardiac muscle tonicity. For example, Shimomura et al. teach (see, e.g. JP404089419A, abstract) a cashew nut oil (i.e. cashew nuts are *Anacardium Occidentale Linn*) that has antioxidative and antimicrobial action for excellent beautifying effects. Thus, the art is silent regarding the efficacy of applicant's composition consisting essentially of nut oil extract obtained from nuts from the entire *Anacardium* genus and *Semecarpous* genus and further including the other claimed extracts (i.e. *Allium Sativum Linn* and *Officinale Rose Linn*) to treat the claimed cardiac ailments and for increasing cardiac muscle tonicity. Therefore, applicant's claimed composition consisting essentially of nut oil extract obtained from nuts from the entire *Anacardium* genus and *Semecarpous* genus and further including the other claimed extracts (i.e. *Allium Sativum Linn* and *Officinale Rose Linn*) to treat the claimed disorders therein is unpredictable in the art. In addition, applicant's specification, however, has failed to provide guidance or working examples whereby applicant prepares a composition consisting essentially of nut oil extract obtained from nuts from the entire *Anacardium* genus and *Semecarpous* genus and further including the other

claimed extracts (i.e. *Allium Sativum Linn* and *Officinale Rose Linn*) to treat the claimed disorders therein.

Therefore, it would require undue experimentation without a reasonable expectation of success for one of skill in the art to practice the invention commensurate in scope with the claims.

**No claims are allowed.**

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Winston whose telephone number is 571-272-0972. The examiner can normally be reached on 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CHRISTOPHER R. TATE  
PRIMARY EXAMINER